

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

VILLAGE PEST SERVICES, INC. as
Successor-in-Interest to BAY AREA PEST
AND TERMITE CONTROL, INC.,

Defendant.

COMPLAINT

The United States of America, by and through Maria Chapa Lopez, United States Attorney for the Middle District of Florida, for its complaint, alleges as follows:

Jurisdiction and Venue

1. This is an action by the United States of America to obtain a judgment against the defendant, Village Pest Services, Inc., as successor-in-interest to Bay Area Pest and Termite Control, Inc., for unpaid Form 944 employment tax liabilities for 2006, 2007, and 2008, and unpaid Form 941 employment tax liabilities for all four quarters of 2009.
2. This civil action is authorized and sanctioned by the Chief Counsel, Internal Revenue Service, a duly authorized delegate of the Secretary of the Treasury, and has been commenced at the direction of a delegate of the Attorney General of the United States.
26 U.S.C. § 7401.
3. The Court has jurisdiction over this action under 26 U.S.C. § 7402 and 28 U.S.C. §§ 1340 and 1345.

4. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1396 because defendant Village Pest Services, Inc. resides in Summerfield, Florida, which is located in Marion County.

Defendant's Predecessor-in-Interest Has Federal Employment Tax Debt

5. On the dates and in the amounts set forth below, a delegate of the Secretary of the Treasury assessed Bay Area Pest and Termite Control, Inc. with Form 944 employment tax liabilities for 2006, 2007, and 2008, and Form 941 employment tax liabilities for all four quarters of 2009, based on filed returns:

Tax Period	Type of Tax	Assessment Date	Tax Assessed	Penalties Assessed ¹	Interest Assessed
200612	Form 944	2/16/2009	\$7,443.83	\$1,224.86* \$543.38# \$680.48^	\$999.09
200712	Form 944	4/28/2008	\$45,616.43	\$4,105.48* \$684.25^	\$807.29
200812	Form 944	3/16/2009	\$35,751.95	\$1,608.84* \$3,575.18# \$357.52^	\$225.85
200903	Form 941	6/15/2009	\$9,397.89	\$119.57+ \$632.80# \$59.79^	\$30.21
200906	Form 941	2/1/2010	\$12,667.70	\$1,806.70* \$837.73# \$281.04^	\$201.45
200909	Form 941	12/21/2009	\$11,856.27	\$1,185.62# \$118.56^ \$592.81#	\$66.45
200912	Form 941	3/1/2010	\$7,790.02	\$779.00# \$77.90^ \$389.50#	\$24.80

¹ *Failure to File Penalty; #Failure to Deposit Penalty; ^Late Payment Penalty; +Dishonored Payment Penalty.

6. A delegate of the Secretary of the Treasury, in accordance with the Internal Revenue laws, gave written notice of the assessments described above to Bay Area Pest and Termite Control, Inc. and made demand for payment.
7. Despite notice of the assessments and demand for payment, Bay Area Pest and Termite Control, Inc. refused or neglected to pay the assessed tax liability, penalties, and interest that have accrued on those taxes. As of November 26, 2018, the unpaid balance of tax and statutory additions, including interest, is \$168,375.80.

Defendant is Liable as Successor-in-Interest to Bay Area Pest and Termite Control, Inc.

8. Bay Area Pest and Termite Control, Inc. is a defunct Florida corporation that operated until it was voluntarily dissolved on January 22, 2010 by Constantin Cora, who is owner, director, and president of the corporation.
9. Constantin Cora purchased Village Pest Services, Inc., a Florida corporation, from a friend in July of 2009 for approximately \$48,000, and thereafter served as its director and president.
10. Following his purchase of Village Pest Services, Inc., Constantin Cora purported to transfer all of the assets Bay Area Pest and Termite Control, Inc. to Village Pest Services, Inc. for a purchase price of \$2,325.
11. The consideration paid for the purported transfer described in paragraph 10 was not full and adequate.
12. At the time of the purported transfer described in paragraph 10, Notices of Federal Tax Lien had been properly filed against Bay Area Pest Termite Control, Inc. in the public records of Marion County, Florida with respect to the taxes described in paragraph 5.

13. At the time of the purported transfer described in paragraph 10, Constantin Cora was aware of the unpaid employment tax liabilities described in paragraph 5.
14. The purported transfer described in paragraph 10 was intended to defraud creditors, including the United States of America.
15. Following the purported transfer described in paragraph 10, Village Pest Services, Inc. continued to operate at the same business location as Bay Area Pest and Termite Control, Inc. had operated.
16. Following the purported transfer described in paragraph 10, Village Pest Services, Inc. continued to use the same equipment that Bay Area Pest and Termite Control, Inc. had used.
17. Following the purported transfer described in paragraph 10, Village Pest Services, Inc. continued to service the same customers that Bay Area Pest and Termite Control, Inc. had serviced.
18. Village Pest Services, Inc. is liable for the employment tax liabilities described in paragraph 5 as a successor-in-interest to Bay Area Pest and Termite Control, Inc.

Additional Facts Concerning Statute of Limitations

19. In general, the United States has ten years from the date of an assessment to collect the tax, penalty, or interest assessed or to bring a timely proceeding for the collection of the tax. 26 U.S.C. § 6502.
20. One exception to this general rule is that the ten-year period for collection is suspended for any period during which the Secretary of the Treasury is prohibited from making a levy. 26 U.S.C. § 6331(i)(5).

21. The Secretary of the Treasury is prohibited from making a levy on the property or rights to property of any person during the period an installment agreement for the payment of the unpaid tax is pending and for 30 days after it is terminated. 26 U.S.C. § 6331(k)(2).
22. Bay Area Pest and Termite Control, Inc. entered into two installment agreements with respect to the 2007 Form 944 employment tax liability described in paragraph 5. The first was initiated on February 11, 2009, remained pending until it was established on July 31, 2009, and terminated on February 17, 2010. The second installment agreement was established on May 16, 2014 and terminated on August 19, 2016. The two installment agreements resulted in at least a 230-day suspension of the collection statute, 170 days for the period the first installment agreement was pending and 30 days after each termination.
23. Bay Area Pest and Termite Control Inc.'s 2007 Form 944 tax liability was assessed on April 28, 2008. Absent suspension the collection statute on the 2007 Form 944 liability would have expired April 28, 2018, but by virtue of the 230-day suspension it was extended to December 14, 2018. Treas. Reg. § 301.6331-4(c).

WHEREFORE, the plaintiff United States of America, prays for the following relief:

- a. That this Court determine and adjudge that Village Pest Services, Inc., as successor-in-interest to Bay Area Pest and Termite Control, Inc., is indebted to the United States in the amount of \$168,375.80 plus fees and statutory additions thereon as provided by law from November 26, 2018.

- b. That this Court grant such other and further relief as is just and proper, including the costs of this action.

Richard E. Zuckerman
Principal Deputy Assistant Attorney General

By: /s/ Mary Apostolakos Hervey
Mary Apostolakos Hervey
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-6484
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Mary.Apostolakos.Hervey@usdoj.gov

Of counsel:

Maria Chapa Lopez
United States Attorney

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mary Apostolakos Hervey, US DOJ Tax Division, PO Box 14198
Ben Franklin Station, Washington, DC 20044 (202) 514-6484

DEFENDANTS

Village Pest Services, Inc., as successor-in-interest

County of Residence of First Listed Defendant Marion
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
26 U.S.C. Sections 7401 and 7402

Brief description of cause:
Suit to reduce tax assessment to judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$
\$168,375.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/7/18

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

United States of America

Plaintiff

v.

Village Pest Services, Inc., as successor-in-interest
to Bay Area Pest and Termite Control, Inc.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Constantin Cora, President and
Registered Agent for
Village Pest Services, Inc.
8555 SE 162 Place
Summerfield, FL 34491

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Mary Apostolakos Hervey
US Department of Justice Tax Division
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: